79-1530

Supreme Court, U. S.
FILED
MAR 31 1980
MICHAEL RODAK, JR., CLERK

in the

Supreme Court

of the

United States

October Term 1979

NO. 79-

JACQUELYN RENEE TOWN,

Appellant,

vs.

~~STATE OF FLORIDA ex rel~~. JANET RENO, as State Attorney of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida, and the CITY OF MIAMI BEACH, a Florida municipal corporation,

Appellees.

On Appeal from the Supreme Court of Florida

JURISDICTIONAL STATEMENT

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March 31, 1980

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Other Authorities:

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STATE OF FLORIDA ex rel. JANET RENO, as State Attorney of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida, and the CITY OF MIAMI BEACH, a Florida municipal corporation,

Appellees.

On Appeal from the Supreme Court of Florida

JURISDICTIONAL STATEMENT

JACQUELYN RENEE TOWN, the Appellant, appeals from the Final Judgment of the Supreme Court of Florida, decision dated November 1, 1979, Petition for Rehearing denied, January 8, 1980, holding that Florida Statutes Sections 60.05, 823.05, and 823.10, as applied in this case, are not unconstitutional as violative of Appellant's right of free exercise of religion guaranteed by the First and Fourteenth Amendments of the Constitution of the United States, and also holding that a trial court injunction enforcing Florida Statutes Section 60.05, as well as the zoning ordinance of the City of Miami Beach, violates neither Appellant's due process right under the Fourteenth Amendment of the Constitution of the United States nor Appellant's right of religious freedom guaranteed by the Establishment Clause of the First Amendment of the Constitution of the United States and the Fourteenth Amendment of the Constitution of the United States.

OPINION BELOW

The opinion of the Supreme Court of Florida, is reported at 377 So.2d 648 (Fla. 1979), and is set out in the Appendix, *infra,* pp. 1a-10a. The Order of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, is not reported. The Order, which includes findings of fact and conclusions of law, is set out in the Appendix, *infra,* pp. 11a-22a.

JURISDICTION

The Judgment of the Supreme Court of Florida affirming the Order of the Circuit Court, was entered on November 1, 1979. A timely Motion for Rehearing was denied on January 8, 1980. App., *infra,* p. 23a. A Notice of Appeal to this Court was timely filed in the Supreme Court of Florida, as well as in the Circuit Court, on March 24, 1980. App. *infra,* pp. 25a and 27a. The jurisdiction of this court is invoked under 28 U.S.C. Section 1257(2). *Dahnke-Walker Milling Co. v. Bondurant,* 257 U.S. 282 (1921) sustains the jurisdiction of this Court to review the Judgment by appeal in this case.

QUESTIONS PRESENTED

1. Whether Florida Statutes Sections 60.05, 823.05, 823.10, violate the Free Exercise Clause of the First Amendment when construed and applied to authorize an injunction prohibiting an individual, within her own home, from using, or allowing her guests to use, marijuana, notwithstanding that the individual and her guests are sincere adherents of a bona fide religion, and that use of marijuana is a central practice of this religion.

2. Whether an injunction issued by the trial court, purporting to enforce Florida Statutes Section 60.05, and the zoning ordinance of the City of Miami Beach, violates either the Due Process Clause of the Fourteenth Amendment, or the Establishment Clause of the First Amendment by prohibiting an individual from using her home as a church but permitting her to pray in her home with "several friends".

CONSTITUTIONAL PROVISIONS, STATUTES, AND ORDINANCE

First Amendment, United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

Fourteenth Amendment, United States Constitution:

. . . (N)or shall any State deprive any person of life, liberty, or property, without due process of law . . .

Florida Statutes Section 60.05:

(1) When any nuisance as defined in §823.05 exists, the Attorney General or State Attorney or any citizen of the county may sue in the name of the state on his relation to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists. . . .

Florida Statutes Section 823.05:

Whoever shall erect, establish, continue, or maintain, own or lease . . . any place where any law of the state is violated, shall be deemed guilty of

maintaining a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures and contents are declared a nuisance. All such places or persons shall be abated or enjoined as provided in §§60.05 and 60.06.

Florida Statutes Section 823.10:

Any store, shop, warehouse, dwelling house, building, vehicle, ship, boat, vessel, aircraft, or any place whatever, which is visited by persons for the purpose of unlawfully using any substance controlled under chapter 893 or any drugs as described in chapter 500, or which is used for the illegal keeping, selling, or delivering of the same, shall be deemed a public nuisance. No person shall keep or maintain such public nuisance or aid and abet another in keeping or maintaining such public nuisance.

Florida Statutes Section 893.03:

The substances enumerated herein are controlled by this chapter. . . .

(1) SCHEDULE I. — A substance in Schedule I has a high potential for abuse and has no currently accepted medical use in treatment in the United States, and in its use under medical supervision does not meet accepted safety standards. The following substances are controlled in Schedule I:

. . . (c) . . . 3. Cannabis.

Miami Beach, Fla., Ordinance Number 1891 (Oct. 1, 1971, revised Aug. 1, 1974) (Zoning Ordinance):

6-1 **RS-1, RS-2, RS-3 and RS-4 Single-Family Residential Districts.**

A. **DISTRICT PURPOSE.** These Districts are designed to foster and protect Miami Beach's single-family residential neighborhoods. The four Districts vary only in minimum lot area and lot width requirements.

B. **USES PERMITTED.** No land, water or structure may be used, in whole or part, except for one or more of the following uses:

1. Single-family detached dwelling.

2. The following uses may be permitted as a Conditional Use:

   a. Municipally owned and operated recreation facility, playground, playfield, park and beach.

   b. Municipal buildings and uses.

   c. Temporary use for a period not to exceed 15 days.

3. Accessory uses for above uses.

* * * *

RAISING THE FEDERAL QUESTION

As to the first question presented, the Appellant, at the earliest possible stage of the trial proceedings below, raised the claim, in a Motion to Dismiss the Complaint, that the Free Exercise Clause of the First Amendment of the Constitution of the United States would render unconstitutional the application in this case, through enforcement by injunction, of Florida Statutes Sections 60.05, 823.05, and 823.10. The trial court, by Order, ruled on the merits of Appellant's motion, denying the Motion to Dismiss. This First Amendment claim was raised again by Appellant before the Supreme Court of Florida. As its opinion indicates, the Florida Supreme Court, in affirming the Order of the trial court, considered and expressly rejected this Federal Constitutional claim. App., *infra,* p. 3a.

As to the second question presented, at the earliest possible stage of the trial proceedings below, at the time the trial judge orally announced his decision, counsel for Appellant specifically asked the judge to specify what religious activities Appellant could undertake in her home and what religious activities she must avoid. Earlier, counsel for Appellant, by memorandum, had indicated to the trial court in general terms that the question of Appellant's use of her home for religious practice raised questions under the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States and the Religion Clauses of the First Amendment of the Constitution of the United States. The trial judge nonetheless issued his Order in the form before this Court. App., *infra,* p. 21a.

These due process and First Amendment questions were raised again by Appellant before the Supreme Court of Florida. As its opinion indicated, the Florida Supreme Court, in affirming the Order of the trial court, considered and expressly rejected these Federal Constitutional claims, as it understood them. App., *infra,* p. 3a. Appellant, by Motion for Rehearing, raised the issues once again, arguing that the Supreme Court of Florida had not in fact addressed these matters squarely in its decision. The Florida Supreme Court denied the Motion for Rehearing. App., *infra,* p. 23a.

STATEMENT OF THE CASE

The Appellant, JACQUELYN RENEE TOWN, is the lawful owner of the dwelling house at 43 Star Island, Miami Beach, Dade County, Florida.

On January 19, 1979, the State of Florida and the City of Miami Beach filed a complaint seeking injunctive relief charging Appellant with violating Florida Statutes Sections 60.05, 823.05, and 823.10, and by incorporation through Section 60.05, the zoning ordinance of the City of Miami Beach. The complaint alleged in essence that Appellant had permitted the use of marijuana in her home, in contravention of Florida Statutes Sections 60.05, 823.05, and 823.10, and that she had permitted the use of her home as a church, contrary to the commands of Florida Statutes Section 60.05 and the zoning ordinance of Miami Beach.

Extensive hearings in the trial court led to findings of fact by that court revealing the circumstances which prompted the filing of the complaint by Appellees. These findings, and if pertinent the evidence behind

them, may be summarized as follows (*see* App., *infra,* pp. 11a-22a):

(1) Appellant, JACQUELYN RENEE TOWN, is a sincere practicing member of the Ethiopian Zion Coptic Church.

(2) The Ethiopian Zion Coptic Church is a bona fide religion of long standing. Uncontested testimony at trial established the roots of this religion in Jamaica and Ethiopia.

(3) The use of marijuana, as the trial court specifically concluded, "is an *essential* portion of the religious practice" of the Ethiopian Zion Coptic Church. App., *infra,* p. 15a. (emphasis added). The trial court's detailed findings with respect to this question are worth noting (App., *infra,* p. 13a):

> "b. Cannabis is smoked as the mystical body and blood of 'Jes-us'; serves to permit a member of the faith to go deeper within his consciousness to see everything that he has done wrong; serves to permit a member to find a spirit of love, unity and justice within himself so as to enable that member to convey such to others; serves to open a member's moral equilibrium to plant the seed of unfaltering righteousness, and to allow a member to see and know that 'God' is a man; serves to bring a member closer to 'God' and to the divine communication of 'the living God'; and serves as a remembrance of 'God'."

(4) Appellant, consistent with her religious beliefs and practices, permitted and condoned the use of marijuana upon the premises of her home. The evidence at trial reveals that users of marijuana at Appellant's home included guests and the children of guests. Guests were chiefly fellow members of the Ethiopian Zion Coptic Church. At times, however, guests included persons, sometimes minors, who expressed an interest in the church. Appellant retained a security guard at the gate to her home to screen visitors. The evidence includes testimony as to one incident involving a minor who lied to the guard to gain entrance to Appellant's house, partook of marijuana, was discovered by Appellant, and ejected.

(5) Guests at Appellant's home, in addition to using marijuana as part of their religious practice, engaged in collectively chanted prayer at periodic intervals. The evidence indicates that Appellant frequently entertained guests. Nothing in the evidence, however, suggests that any of the guests resided at Appellant's home. Residents at 43 Star Island included only Appellant and her two children.

The trial court, purporting to balance the constitutional rights of Appellant and the law enforcement interests of Appellees, concluded that injunctive relief to enforce Florida Statutes Sections 60.05, 823.05, and 823.10, was indeed appropriate, and issued an Order, nominally a temporary injunction, which prohibited use of marijuana upon the premises of Appellant's home. That same Order prohibited the use of Appellant's home as a church. The Supreme Court of Florida, affirming the Order of the trial court, concluded

that an injunction prohibiting use of marijuana, on the facts of this case, was appropriate only if justified by a compelling state interest, and found compelling the state's interest in denying access to marijuana to minors, in protecting the health of marijuana users, and in protecting the public from safety hazards created by persons who drive automobiles after using marijuana. The Florida Supreme Court also affirmed that part of the Order of the trial court enjoining the use of Appellant's home as a church.[1]

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[1]As its opinion indicates, the decision of the Florida Supreme Court took the form of interlocutory review because the Order of the trial court, ultimately at issue, was in name at least a temporary injunction. App., *infra*, p. 1a. Arguably, therefore, the finality requirement of 28 U.S.C. Section 1257, may deny this court jurisdiction here because of the apparently provisional nature of the trial court's Order. It is well-established under the decisions of this Court, however, that if an order imposing a temporary injunction leaves "nothing more of substance to be decided in the trial court," *Construction Laborers v. Curry*, 371 U.S. 542, 551 (1963), if "the issuance of a permanent injunction . . . will be little more than a formality," *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 418, n.1 (1971), a nominally "temporary" injunction is nonetheless final for the purposes of this Court's jurisdiction. In this sense, the temporary injunction here is final: It followed a full evidentiary hearing, Appellant has no other defenses to offer should Appellee seek permanent injunction, Appellees here have made no effort to seek a permanent injunction, and thus the trial court Order, and the Florida Supreme Court's review of that Order, dispose of this case finally as a practical matter.

(footnote 1 continued)

Moreover, although the decision of the Supreme Court of Florida did not explicitly address the question of statutory validity, this case is nonetheless one in which the constitutionality of state statutes, as applied, is at issue, at least with respect to the first question presented. 28 U.S.C. §1257(2); *see Dahnke-Walker Milling Co. v. Bondurant,* 257 U.S. 282 (1921). It is plain from the Complaint which Appellees filed in the trial court, as well as from the briefs of both Appellant and Appellees in the Florida Supreme Court, that Appellees asserted that Appellant, by allowing religious use of marijuana in her home, had violated several statutes, to wit: Florida Statutes Sections 60.05, 823.05, and 823.10. Moreover, Appellant in her brief presented to the Florida Supreme Court, "distinctly insisted," *Dahnke-Walker Milling Co. v. Bondurant,* 257 U.S. at 289, that the question of marijuana use was one of the constitutionality of the statutes as applied.

Obviously, even if this Court's appellate jurisdiction under 28 U.S.C. Section 1257(2) is not appropriate here, review by writ of certiorari under 28 U.S.C. Section 1257(3) would be plainly appropriate. *See* 28 U.S.C. §2103.

The second question in this case, because it concerns the propriety of injunctive language as such, is obviously not a question sounding in statutory application. It is, however, a question which properly falls within the certiorari jurisdiction of this Court, and should this Court treat the first question presented as one within the appellate jurisdiction, review also of the second question would not be inappropriate. *See, e.g., Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469, 487, n.14 (1975).

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

1. **Whether Florida Statutes Sections 60.05, 823.05, and 823.10, violate the Free Exercise Clause when interpreted to authorize an injunction prohibiting religious use of marijuana within a person's own home.**

The question in this case is whether a state may prohibit the religious use of marijuana in the home. It is a novel and substantial question. Neither this specific question, nor, as the Court has recently noted, the more general question of constitutional protection for religious use of controlled substances, has ever been treated by this Court. *See McDaniel v. Paty,* 435 U.S. 618, 628 n.8 (1978).

Obviously, however, principles well established by the Free Exercise Clause decisions of this Court apply to cases involving religious use of controlled substances. This Court has repeatedly held that an individual cannot claim Free Exercise Clause protection for religious activities which are otherwise generally prohibited unless the activities are central to the individual's sincere religious beliefs. *See, e.g., Wisconsin v. Yoder,* 406 U.S. 205, 215 (1972); *Sherbert v. Verner,* 374 U.S. 398, 406 (1963). This Court has also repeatedly held that, if an individual satisfies this threshold requirement, the burden shifts to the state to show a compelling justification, *i.e.,* an important and legitimate government interest which is furthered by no less restrictive alternative, *see Wisconsin v. Yoder,* 406 U.S. at 215, which is apparent from the record in the

case at bar, *see, e.g., McDaniel v. Paty,* 435 U.S. at 628; *Wisconsin v. Yoder,* 406 U.S. at 224, 230; *Sherbert v. Verner,* 374 U.S. at 407, and which would indeed be jeopardized if the conduct of the individual which is the subject of litigation were privileged, *see, e.g., Wisconsin v. Yoder,* 406 U.S. at 224, 225, 227, 229, 230; *Sherbert v. Verner,* 374 U.S. at 407; *Braunfeld v. Brown,* 366 U.S. 599, 607-09 (1961); *Prince v. Massachusetts,* 321 U.S. 158, 167, 170 (1944).

Wisconsin v. Yoder provides a particularly relevant illustration of these principles. The question in *Yoder* was whether the State could enforce its mandatory education laws, requiring attendance of all children until the age of sixteen (16), against members of the Amish religion who refused on religious grounds to send their children to school beyond the eighth grade. As this Court noted, the testimony at trial in *Yoder* established that the Amish objection to education of their children beyond the eighth grade was "firmly grounded in . . . central religious concepts." *Id.* at 210. Expert testimony at trial also showed that requiring attendance of Amish children at school beyond the eighth grade would "ultimately result in the destruction of the Old Order Amish church community as it exists in the United States today." *Id.* at 212. Accordingly, this Court concluded that to require Amish children to attend school beyond the eighth grade would "contravene . . . the basic religious tenets and practice of the Amish faith . . .", *Id.* at 218, and "gravely endanger if not destroy the free exercise of respondents' religious beliefs." *Id.* at 219.

In the face of the threat the compulsory education law posed to these characteristics of the Amish faith, the

State of Wisconsin asserted that its "interest in universal compulsory formal secondary education to age sixteen (16) is so great that it is paramount to the undisputed claims of respondents that their mode of preparing their youth for Amish life . . . is an essential part of their religious belief and practice." *Id.* In dealing with the conflict between the free exercise claim and the State's asserted compelling interest, however, this Court refused to accept the State's "sweeping claim"; rather, this Court held that it "must searchingly examine the interests that the State seeks to promote by its requirement for compulsory education to age sixteen (16), and the impediment to those objectives that would flow from recognizing the claimed Amish exemption." *Id.* at 221. This Court's inquiry took the form which Appellant has described above. At the close of that inquiry, this Court found "it was incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish." *Id.* at 236. Accordingly, this Court held in *Wisconsin v. Yoder* that the Amish were indeed entitled to the protection of the Free Exercise Clause.

Plainly, this case is not one in which there is any question whether use of marijuana is indeed religious in character. The Florida Supreme Court concluded:

> "The record substantiated the trial court's findings that the church was a religion within the First Amendment, that petitioner sincerely subscribed to the beliefs of the church, the use of Cannabis was an integral part of the religion." App., *infra,* p. 3a.

Moreover, the record at trial in this case shows that the Ethiopian Zion Coptic Church, like the Old Order Amish religion in *Yoder,* is a long-established religious faith, including among its tenets strict restrictions of dietary practices, as well as other restrictions designed to encourage an ascetic way of life. Rather, the critical issue in this case is whether, as the Florida Supreme Court put it, "the State of Florida has a compelling interest in restricting the use of Cannabis as a religious practice." *Id.*

Although nominally acknowledging the appropriateness of the compelling interest standard, the Florida Supreme Court repeatedly erred in applying the test. The court emphasized four state interests: A state interest in protecting individuals from serious threats to health, App., *infra,* p. 4a; a state interest in denying access to marijuana to children, App., *infra,* p. 5a; a state interest in protecting the public from risks created by users of marijuana returning to their own homes by automobile from Appellant's residence, App., *infra,* p. 7a; and a state interest in not creating an exception from the marijuana prohibition for anyone who came to Appellant's residence, App., *infra,* p. 7a.

With respect to the state interest in the health of marijuana users, the Florida Supreme Court found the applicability of this interest sufficiently established by the fact that concern for public health in general underlay Florida Statutes prohibiting use of marijuana, App., *infra,* p. 4a, testimony introduced by the state at trial concerning the generally hazardous character of marijuana use, App., *infra,* p. 5a, and evidence indicating frequent use of marijuana by guests at

Appellant's home, App., *infra,* p. 5a. Notably, however, the court below failed to refer to any evidence in the record concerning the actual effect of marijuana use upon the health of Appellant or her guests. There is no such evidence revealed in the record of this case. Such evidence, however, is the only sort of evidence that would establish the state interest in health as compelling. *Cf. People v. Woody,* 394 P.2d at 818 (health interest inapposite since no evidence church members actually substitute peyote for health care).

The other state interests which the Florida Supreme Court invoked fare even worse under compelling interest scrutiny. There obviously exists a less restrictive alternative which would further the state interest in denying the children access to marijuana. As the dissent below noted, this state interest would be as well served by an injunction which simply prohibited use of marijuana by children at Appellant's home. App., *infra,* p. 9a. The court below refers to no evidence in the record, and in fact there is none, which would establish the existence in this case of a threat to public safety created by guests leaving Appellant's residence. In any event, there is again a less restrictive alternative: enforcement of Florida Statutes prohibiting use of an automobile while under the influence of marijuana. See Fla. Stat. §§316.93, 860.01. Finally, as the dissent below also noted, App., *infra,* p. 9a, there is an obvious alternative to the injunction issued in this case if the relevant state concern is with denying members of the public at large a sanctuary for marijuana use at Appellant's home. This interest would be equally well served by an injunction prohibiting use of marijuana at Appellant's home by anyone not a church member.

Thus, it is apparent in this case that the court below erred. The error is not one of fact, but of failure to heed requirements of Free Exercise Clause jurisprudence well-established by the decisions of this Court. The error is not unique, but similar in nature to departures from this Court's requirements apparent in the decisions of other state courts and lower federal courts.[2] The decision below in this case is part of a pattern of conflict, not only among lower courts, but between lower courts and this Court. In sum, the question presented is plainly substantial.

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[2]State courts, as well as lower federal courts, have repeatedly considered questions of religious use of controlled substances. The leading case, as this Court implicitly recognized in *McDaniel v. Paty*, 435 U.S. at 628 n.8, is *People v. Woody*, 61 Cal.2d 716, 394 P.2d 813, 40 Cal.Rptr. 69 (1964). In that case, the California Supreme Court upheld, as the defense to criminal prosecution, the claim of members of the Native American Church that peyote has a sacramental use under the tenets of their religion, and thus that, for them, use of peyote is protected by the Free Exercise Clause of the First Amendment. *Accord, Whitehorn v. State*, 561 P.2d 539 (Okla.Crim.App. 1977); *State v. Whittingham*, 19 Ariz.App. 27, 504 P.2d 950 (Ct.App. 1973). *See also Kennedy v. Bureau of Narcotics and Dangerous Drugs*, 459 F.2d 415, 417 (9th Cir. 1972). Courts hearing cases after *Woody* in which individuals have claimed constitutional protection for marijuana use have apparently without exception rejected these claims. But, many courts hearing marijuana cases, like the Florida Supreme Court here, after finding marijuana use to be a sincere religious practice, fail to apply a compelling interest standard in judging state interest. *See e.g., Randall v. Wyrick*, 441 F.Supp. 312, 316 (W.D.Mo. 1977); *State v. Soto*, 21 Or.App. 794, 537 P.2d 142, 144 (Ct.App. 1975); *Gaskin v.*

(footnote 2 continued)

State, 490 S.W.2d 521, 523-34 (Tenn. 1973); *Lewellyn v. State,* 489 P.2d 511, 516 (Okla.Crim.App. 1971). Other cases differ from *Woody* and from this case factually. Thus, courts have rejected claims of religious protection in cases in which the courts have real doubt as to the sincerity of the beliefs which the individual has claimed to hold. *See United States v. Kuch,* 288 F.Supp. 439, 444-45 (D.D.C. 1968); *State v. Bullard,* 267 N.C. 599, 603-604, 148 S.E.2d 565, 568-69 (1966). Similarly, courts have also rejected Free Exercise Clause claims in cases in which there is no evidence of a religion's existence apart from one individual's claim in court. *See People v. Crawford,* 69 Misc.2d 500, 507-508, 328 N.Y.S.2d 747, 754-55 (Dist.Ct. 1972); *People v. Mitchell,* 244 Cal.App.2d 176, 180, 52 Cal.Rptr. 884, 888 (Ct.App. 1966). Other courts have found that the use of marijuana or similar substances was not indeed central to religious ritual, *see People v. Mullins,* 50 Cal.App.3d 61, 68, 123 Cal.Rptr. 201, 208 (Ct.App. 1975); *People v. Werber,* 19 Cal.App. 3d 598, 605, 97 Cal.Rptr. 150, 157 (Ct.App. 1971); *People v. Collins,* 273 Cal.App.2d 486, 487, 78 Cal.Rptr. 151, 152 (Ct.App. 1969), or that the religion in which an individual professed to believe merely tolerated, countenanced, or weakly approved of such use, *see United States v. Spears,* 443 F.2d 895 (5th Cir. 1971); *United States v. Hudson,* 431 F.2d 468 (5th Cir. 1970); *Leary v. United States,* 383 F.2d 851, 860 (5th Cir. 1967).

2. **Whether an injunction violates either the Due Process Clause or the Establishment Clause by prohibiting use of a home as a church but permitting the home's owner to pray there with friends.**

Zoning laws restricting property available for use as churches, once rare, are increasingly common. *See, e.g.*, R. Anderson, *American Law of Zoning*, §12.19, pp. 448-450 (2d ed. 1976); N. Williams, *American Planning Law*, §77.03, pp. 557-577 (1975); Suppl., pp. 223-227 (1979). Courts enforcing such laws, as well as laws granting preferred treatment to churches, are not infrequently required to decide whether a particular use of property constitutes use as a church. *See American Planning Law, supra*, §77.17, pp. 599-600. The question of the criteria which courts may constitutionally use to identify and prohibit church use is thus obviously significant. The question, however, is one which this Court has never addressed.

In this case, the trial court obviously erred in drafting the temporary injunction. First, it is unconstitutionally vague. To comply, the Appellant must come to some conclusion as to what constitutes "organized church" activity, learning, study, prayer, and business, and yet the term "organized church" is undefined in the injunction and is without any obvious common meaning. Moreover, Appellant must distinguish between "regular" "group or communal" prayer services, and prayers with "several friends", and again, neither the injunction nor ordinary usage provides guidance. Plainly, a person of common intelligence cannot tell from the trial court's injunction

what is prohibited. The injunction is thus unconstitutionally vague and therefore violates the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States. *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926); *accord, e.g., Grayned v. City of Rockford,* 408 U.S. 104 (1972); *Papachristou v. City of Jacksonville,* 405 U.S. 156 (1972).

Secondly, the injunction, as drafted, violates the Establishment Clause of the First Amendment of the United States Constitution. This Court has repeatedly held that the Establishment Clause prohibits "excessive and enduring entanglement between state and church by way of state inspection and evaluation of the religious content of a religious organization." *Lemon v. Kurtzman,* 403 U.S. 602, 619 (1971). Such unconstitutional entanglement exists regardless of whether state officials must distinguish between religious and non-religious activity, *see, e.g., Committee for Public Education v. Nyquist,* 413 U.S. 756 (1973), or rather among religious acts, *see, e.g., Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976); *Presbyterian Church v. Hull Church,* 393 U.S. 440 (1969). The very terms of the trial court's injunction reveal such unconstitutional entanglement. For example, the injunction purports to distinguish "praying" from "prayer services." The likelihood that the injunction would lead to even further entanglement is also obviously real. Were the trial court required to decide whether Appellant was "praying" or conducting "prayer service", an inquiry would necessarily involve the trial court in complex questions of religious ritual, precisely the sort of questions which the Establishment Clause shuts off from judicial inquiry.

The Florida Supreme Court, although acknowledging that the vagueness and entanglement issues were before it, App., *infra,* p. 8a, rejected Appellant's claims without directly discussing the issues. The court simply noted that the authority of a city or county to regulate reasonably the location of churches was well established. App., *infra,* p. 8a. Appellant did not, and does not, dispute this point. The issue here concerns the form of the injunction by which courts enforce reasonable zoning regulations, and not the reasonableness of the regulations themselves.

CONCLUSION

For these reasons, this court should note probable jurisdiction of this appeal.

Respectfully submitted,

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March 31, 1980

Appendix

SUPREME COURT OF FLORIDA

No. 55,987

JACQUELYN RENEE TOWN,

Petitioner,

v.

STATE OF FLORIDA ex rel. JANET RENO, as State Attorney of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida, and CITY OF MIAMI BEACH, a Florida municipal corporation,

Respondents.

[November 1, 1979]

OVERTON, J.

This cause is before us on a petition for writ of certiorari to review a temporary injunction granted by the circuit court of Dade County enjoining the use of cannabis on residential property owned by Jacquelyn Renee Town and enjoining the use of said property as a church for the Ethiopian Zion Coptic Church. In entering this injunction, the trial court directly and initially construed the first amendment of the United States Constitution. We have jurisdiction to review this interlocutory order by writ of certiorari. Art. V, §3(b)(3), Fla. Const.

For the reasons subsequently expressed in this opinion, we affirm the action of the trial judge.

The parties agree and the trial court expressly found that: (1) the Ethiopian Zion Coptic Church represents a religion within the first amendment to the Constitution of the United States; (2) the "use of cannabis is an essential portion of the religious practice"; (3) petitioner is the owner of a residence located at 43 Star Island, Miami Beach, which she received as a gift from an elder of the church; (4) petitioner's residence was frequented daily by members of the church and others who congregated to worship; (5) under the beliefs of the church, cannabis, a controlled substance, is frequently and freely used; (6) cannabis is not itself an object of worship; (7) prayer is directed solely to a spiritual god; (8) members of the church believe that cannabis is the mystical body and blood of "Jes-us"; and (9) through cannabis members purportedly find a spirit of love, unity, and justice, which brings them closer to their god.

The findings further reflect that the use of cannabis is not restricted to members of the church. Instead, it is freely given to children and adults, members and nonmembers. Checks on distribution of cannabis to nonbelievers in the faith are minimal, and no efforts are made to ascertain whether visiting nonmembers are truly interested in learning more about the faith. Nonmembers are not required to undergo any religious training prior to being permitted to share in the use of cannabis. The record and findings also establish that cannabis is continually smoked throughout the waking hours, independent of prayer services or religious rituals. Members partake of cannabis anywhere, not just within the confines of a church facility. Further, the Ethiopian Zion Coptic Church is not a new church or

religion but the record reflects it is centuries old and has regularly used cannabis as its sacrament. The trial court balanced the state's interests in protecting the public health, welfare, safety, and morals against the petitioner's interests in the free exercise of her religion and found injunctive relief proper. The trial court also found that petitioner's property was used as a church in violation of the zoning ordinances of the City of Miami Beach. For this reason, the court enjoined further use of petitioner's property as a church but permitted Ms. Town to worship in her home with family and friends.

I. The Use of Cannabis as a Religious Practice.

The first amendment precludes the enactment of laws which prohibit the free exercise of religion. Laws may never restrict religious belief; however, religious practices may be subject to governmental regulation in limited instances. *E.g., Sherbert v. Verner,* 374 U.S. 398 (1963). To justify the regulation of a particular religious practice, the state must demonstrate a compelling interest. *Id.; McDaniel v. Paty,* 435 U.S. 618 (1978); *Wisconsin v. Yoder,* 406 U.S. 205 (1972).

The record substantiated the trial court's findings that the church was a religion within the first amendment, that petitioner sincerely subscribed to the beliefs of the church, and that the use of cannabis was an integral part of the religion. The issue before this Court is whether the State of Florida has a compelling interest in restricting the use of cannabis as a religious practice.

It is well established that the state may restrict religious practices which pose a serious threat to the health of the citizenry. Thus, the Supreme Court of the United States long ago held that one might be compelled to be vaccinated against a disease despite religious objection. *Jacobson v. Massachusetts,* 197 U.S. 11 (1905). Other courts have upheld the state's right to protect children by requiring emergency medical treatment over a parent's religious objection. *E.g., In re Sampson,* 29 N.Y.2d 900, 278 N.E.2d 918, 328 N.Y.S.2d 686 (1972); *Jehovah's Witnesses v. King County Hospital,* 390 U.S. 598 (1968). Restriction on the handling of poisonous snakes and drinking poison as a religious practice has also been upheld. *State ex rel. Swann v. Pack,* 527 S.W.2d 99 (Tenn. 1975), *cert. denied,* 424 U.S. 954 (1976).

In *Hamilton v. State,* 366 So.2d 8 (Fla. 1978), this Court reexamined the classification of cannabis as a controlled substance and upheld the statutory scheme regulating its use, reasoning:

> There continues to be authority supporting the position that the health hazards of cannabis justify its proscription and its present classification. Although there is substantial expert opinion to the contrary, the fact that there continues to be expert opinion supporting the reasons which prompted the Legislature to enact this statute is sufficient to constitute a continuing rational basis for the act.

Id. at 10. Petitioner contends that the legislative enactment of section 402.36, Florida Statutes (1978

Supp.), which allows cannabis to be used in medical research has the effect of making the classification of cannabis as a Schedule I drug under section 893.03, Florida Statutes (1978 Supp.), irrational and in effect requires this Court to recede from its *Hamilton* decision. We disagree. In classifying cannabis as a Schedule I drug, the legislature expressly stated that cannabis "has a high potential for abuse and has *no currently accepted medical use* in treatment in the United States, and in its use under medical supervision *does not meet accepted safety standards.*" §893.03(1), Fla. Stat. (1978 Supp.) (emphasis added).

By enacting section 402.36, the legislature was permitting the drug to be used for research only under strictly controlled circumstances in order to determine how, if at all, it could properly be used in medical treatment. This act in no way makes the legislative classification of cannabis arbitrary or unreasonable. We reaffirm our decision in *Hamilton.* Although *Hamilton* is not dispositive of the instant case, it does establish for the State of Florida that cannabis remains a dangerous drug. This fact was also established independently in the instant case through the testimony of expert witnesses. This evidence, coupled with the indiscriminate use of the drug by Ms. Town and the followers of the church, convinces us that the state has sustained its burden. The testimony of an eleven-year-old boy exemplifies our concern. This boy testified that he went to petitioner's residence three times within two months after hearing that cannabis was smoked there. The boy, who had previously smoked cannabis, was admitted with a friend after telling a guard that they had come to pray. Each time he visited he was given a

"spliff," a combination of cannabis and tobacco. He did not have to pray during his visits though members sometimes talked to him about god. This easy access to cannabis for a child who had absolutely no interest in learning the religion, coupled with the indiscriminate use of the drug by members of the church, clearly warrants intervention by the state.

Petitioner cites *People v. Woody,* 61 Cal. 2d 716, 40 Cal. Rptr. 69, 394 P.2d 813 (1964), in which the California Supreme Court held that the state could not constitutionally proscribe the use of peyote by Navajo Indians as a part of their religion. This case is not controlling and is distinguishable. The California court found the use of peyote by an ancient Indian religious group in the desert outweighed the state's interest in proscribing use of the drug. *Accord State v. Whittingham,* 19 Ariz. App. 27, 504 P.2d 950 (Ct. App. 1973), *cert. denied,* 417 U.S. 946 (1974); *Whitehorn v. State,* 561 P.2d 539 (Okla. Ct. Crim. App. 1977). In *Woody* the use of peyote was restricted to adults, and it was used only during a particular ceremony. In the instant case the use of cannabis by members and nonmembers of the church continues throughout the day and is wholly unrestricted. The record further reflects that children and nonmembers are not only permitted to use cannabis but also are encouraged to do so by adult members.

Woody is also distinguishable in that the court expressly found that the peyote users posed no threat to the general public while under that drug's influence. Peyote was used during a ceremony, conducted in the desert, which continued from sundown Saturday to

sunrise Sunday. At sunrise breakfast was served, and then the members departed. By morning the effects of the peyote had disappeared with no aftereffects. In the instant case the record contains testimony of neighbors stating that participants under the influence of cannabis were constantly coming and going. An officer who often observed the activities at petitioner's residence testified that he would usually see fifteen to twenty cars parked on the premises. This evidence coupled with evidence of the use of cannabis at all times of the day leads to the inescapable conclusion that participants traveling from petitioner's residence in fact posed a threat to public safety and welfare.

Although we find the *Woody* decision distinguishable from the instant case, we recognize, as the California court did, that: "[T]he right to free religious expression embodies a precious heritage of our history. In a mass society, which presses at every point toward conformity, the protection of the individual and the group becomes ever more important." 61 Cal. 2d at 727, 40 Cal. Rptr. at 77, 394 P.2d at 821. In the instant case, however, we find that the state's compelling interest outweighs the free exercise interests of the petitioner. To hold otherwise would, for all practical purposes, legalize the use of cannabis for anyone, member or nonmember of the Ethiopian Zion Coptic Church, who came to petitioner's residence to use the prohibited drug.

II. Violation of City Zoning Ordinances.

The second facet of the temporary injunction prohibits Ms. Town from using her residence as a church in violation of Miami Beach zoning ordinances. We concur with the trial court's finding that the residence was indeed serving as a center of operations for the Ethiopian Zion Coptic Church. At least three times a day members of the church would gather in the main building to pray. Prayer meetings would consist of chanting and singing and would sometimes last for several hours. Testimony of several neighbors revealed that approximately thirty people participated in the regular prayer sessions. Ms. Town did not contest, either in her written brief or at oral argument, the trial court's finding that the church was in violation of the city's zoning. Rather, she argued that (1) the zoning ordinances must yield to the first amendment, and (2) the trial court's injunctive order was unconstitutionally vague. She contends that enforcement of this order will necessitate impermissible governmental entanglement. *See, e.g., Lemon v. Kurtzman,* 403 U.S. 602 (1971).

We reject both arguments. The petitioner never sought a zoning exception and did not question the general authority of the city to zone this property. Further, the land was so zoned prior to its purchase for church purposes. The authority of a city or county to reasonably regulate the location of churches has previously been approved by this Court. *See Pylant v. Orange County,* 328 So.2d 199 (Fla. 1976); *United Lutheran Church of the Epiphany v. City of Miami Beach,* 82 So.2d 880 (Fla. 1955). Under the circumstances set forth in this record, we believe the

temporary injunction prohibiting the use of the property identified as 43 Star Island as a church was entirely reasonable and proper and was not unconstitutionally vague.

The order of the trial court is affirmed.

It is so ordered.

ENGLAND, C.J., ADKINS, SUNDBERG and ALDERMAN, JJ., Concur
BOYD, J., Concurs in part and dissents in part with an opinion

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

BOYD, J. Concurring in part, and dissenting in part.

I concur with the majority opinion to the extent that it does not conflict with *People v. Woody,* 394 P.2d 813 (Cal. 1964). I dissent from that portion of the majority opinion which totally forbids the use of cannabis by the Coptic Church. In my opinion the state cannot totally prohibit such a practice but may impose reasonable time, place and manner restrictions calculated to protect children and the general public from adverse effects stemming from the practice.

Bona fide members who are adults have a right to worship in the manner that the Coptic Church has done for centuries before the adoption of the United States Constitution or the discovery of America.

I would remand this cause to the trial court with directions to permit bona fide members to use marijuana in actual worship services in a properly zoned church location, subject to the condition that they do not operate automobiles while under the influence of the drug. The court should designate the persons who are to distribute and receive the drug and require strict accounting to prevent misuse of the sacrament.

The courts have a duty to balance the right of free exercise of religion with the right of society to be protected from adverse results of such religious activities.

Certiorari to the Circuit Court in and for Dade County, Frederick N. Barad, Judge - Case No. 78-20818

Milton M. Ferrell, Jr., Arthur C. Massey, Jr. and Richard R. Booth of Ferrell and Ferrell, Miami, Florida,
for Petitioner

Arthur Joel Berger and Bayard W. Heath, Assistant State Attorneys, Miami, Florida; and Robert L. Shevin, City Attorney and Beth Ellen Spiegel, Assistant City Attorney, Miami Beach, Florida,
for Respondents

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

CASE NO. 78-20818
JUDGE BARAD

STATE OF FLORIDA, ex rel JANET RENO AS STATE ATTORNEY OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY, FLORIDA; and THE CITY OF MIAMI BEACH, a Florida municipal corp.,

Plaintiffs,

vs.

JACQUELYN RENEE TOWN, an individual; and ACCREDITED SURETY & CASUALTY CO., INC., a Florida corporation,

Defendants.

ORDER ON MOTION FOR TEMPORARY INJUNCTION

THIS CASE came on for a hearing on the Plaintiffs' Motion for a Temporary Injunction. The Court held two and one-half (2½) days of evidentiary hearings and legal argument. Before entering the instant order, this Court reviewed all exhibits and other evidence admitted in supplementation of the oral testimony presented in court. This Court also versed itself in the pertinent law as provided by legal memoranda of counsel.

In light of the above, this Court makes the following findings of fact and conclusions of law.

COUNT I

1. The defendant, JACQUELYN RENEE TOWN, was and is at all times relevant to the instant litigation, the lawful owner of the dwelling house, the address of which is 43 Star Island, Miami Beach, Dade County, Florida.

2. The dwelling house located at 43 Star Island, Miami Beach, Dade County, Florida is visited by persons for the purpose of unlawfully using cannabis (also known as marijuana, also known as ganja), a substance controlled under Chapter 893, Florida Statutes (1978) and is used for the illegal keeping, use and delivery of said cannabis.

3. The defendant, JACQUELYN RENEE TOWN, has direct knowledge of the facts alleged in paragraph number two (2) above and condones that activity.

4. Pursuant to Section 823.10, Florida Statutes (1977), the aforementioned premises is a public nuisance.

5. The defendant, JACQUELYN RENEE TOWN, contends that Section 823.10, Florida Statutes (1977) cannot be constitutionally applied to said dwelling house because of the Free Exercise of Religion Clause of the First Amendment to the Constitution of the United States.

6. Defendant JACQUELYN RENEE TOWN asserts that the keeping, use and delivery of cannabis at said premises is directly related to her religious belief and practice as a member of the Ethiopian Zion Coptic Church, a religious faith.

7. The Ethiopian Zion Coptic Church represents a religion within the meaning of the First Amendment to the Constitution of the United States.

8. That conduct referred to in paragraph number two (2) above is related to the religious practice of the Ethiopian Zion Coptic Church, of which defendant TOWN is a member.

9. Regarding the nature of the religious beliefs and practices of the Ethiopian Zion Coptic Church pertinent to the instant litigation, this Court finds the following:

a. Cannabis is not itself an object of worship. Rather, prayer is directed solely to a spiritual "God".

b. Cannabis is smoked as the mystical body and blood of "Jes-us"; serves to permit a member of the faith to go deeper within his consciousness to see everything that he has done wrong; serves to permit a member to find a spirit of love, unity and justice within himself so as to enable that member to convey such to others; serves to open a member's moral equilibrium to plant the seed of unfaltering rightiousness, and to allow a member to see and know that "God" is a man; serves to bring a member closer to "God" and to the divine communication of "the living God"; and serves as a remembrance of "God".

c. The practice of smoking cannabis as it exists at said premises involves non-members of the faith as well as members.

d. Cannabis is freely given for use to adults and children who are not members of the faith as a part of proselytizing. There is only a minimal subjective check on the distribution of cannabis to non-members and no attempt to insure that the non-members sincerely intend to become members of the faith and are not feigning a religious interest in order to use cannabis. Non-members are not required to prove their sincerity in terms of seeking to adopt the faith. There is no period of religious training which non-members must go through prior to being given cannabis for use. The smoking of cannabis by non-members is permitted simultaneously with any religious training in a "smoke as you learn" manner.

e. Cannabis is not smoked as a limited part of practice at one ceremony. Rather, it is part of the practice that the members of the faith continually smoke cannabis throughout their waking hours independently of a prayer service or a particular ritual and that smoking of cannabis be done anywhere and not solely inside a church building.

f. It is part of the practice that the children of adult members of the faith are permitted to smoke cannabis as part of their upbringing in the faith.

g. The belief in the use of cannabis and the fact that cannabis is to be smoked is not the result of a literal reading of the written religious laws and doctrinal

passages upon which the practices are based. Rather, the use and manners of use of cannabis in religious practice is predicated on an attenuated interpretation of certain portions of the written doctrine.

h. The use of cannabis is an essential portion of the religious practice. However, any prohibition of this Court on the use of cannabis in the practice of the faith would not effect other aspects of life of members of the faith, nor preclude them from belief in their "God", nor preclude them from practicing the doctrines, moral precepts, dietary laws, etc., which form the backbone of their religious practice.

i. There is nothing done by members of the faith to counter-balance or neutralize those interests of the State of Florida behind the legislation in question as those interests are stated below.

10. Regarding the nature of the State of Florida's interests behind the laws against the possession and use of cannabis and Section 823.10, Florida Statutes (1977), this Court finds the following to be proven and/or shown to be directly or inferentially the purpose behind the legislation in question:

a. To protect the physical and mental health of the adults and children who would use this drug.

b. To protect the safety of the public, both potential users and non-users, whose safety would be jeopardized by those engaging in conduct while under the influence of cannabis.

c. To protect society from the commission of drug related crimes.

d. To avoid a burden on society caused by the resulting dependency of users upon society due to failure in ability and/or desire to be self-sufficient working and functioning members of society.

e. To preserve the morals of this society.

11. The State could not reasonably enforce its drug laws regarding cannabis if those drug laws were to be nullified by a religious practice exception for the Ethiopian Zion Coptic Church.

12. The interests behind the State of Florida's legislation in question are compelling State interests of the highest nature.

13. In balancing the nature of the State of Florida's interests behind the legislation in question as against the nature of the use of cannabis in the practice of the Ethiopian Zion Coptic Church as practices at the aforementioned premises, this Court finds that the State's interests far outweigh those of said church in continuing to use, keep, possess and deliver cannabis at the dwelling house in question.

14. As a consequence of the balancing process, this Court finds that the Free Exercise of Religion Clause of the First Amendment does not bar enforcement of the laws in question by the State of Florida against the premises at 43 Star Island, Miami Beach, Dade County, Florida, or the defendant,

JACQUELYN RENEE TOWN, as owner of said premises.

15. The illegal use, keeping, possession and delivery of cannabis at 43 Star Island, Miami Beach, Dade County, Florida will continue unless this Court enjoins same.

16. On the facts of this case, there is a need for the issuance of an immediate temporary injunction in light of the nature of the conduct creating the nuisance involved here.

17. There is no adequate alternative remedy that would satisfy the purposes served by an injunction.

18. The public will suffer irreparable harm if the conduct at issue is allowed to continue.

COUNT II

19. The Defendant, JACQUELYN RENEE TOWN, received the premises as a gift from Brother Keith Gordon, an elder in the Ethiopian Zion Coptic Church in Jamaica. The deed reflects a purchase price of $270,000.

20. The Defendant, JACQUELYN RENEE TOWN, does not know from whom she purchased the premises, did not participate in the negotiations, never saw the cash used to buy the premises, did not attend the closing, and never participated in the transaction in any way.

21. The premises consist of a large main house, and two smaller houses. Ms. Town and her two minor children live in the larger of the small houses rather than the main house. There is a cook who lives in the smallest house. There is a full-time maid for the main house paid for from the money received from Keith Gordon.

22. The main house has a teletype machine in it, which Ms. Town has never used, nor does she know who put it there, except that it appeared one day after she took title.

23. There are numerous file cabinets in the main house, which do not belong to Ms. Town and which were placed there by individuals unknown to her, the contents of which are unknown to her.

24. There are guards at the entrance to the premises which are paid by Brother Louv (Thomas Reilly) whom Ms. Town concedes is her priest.

25. Several months ago, Miami Beach Police found $91,000. in cash on the premises, which Ms. Town admits belonged to her and was used for household expenses. The money had been given to her by Keith Gordon, an elder in the Church.

26. At least three times a day members of the Church intentionally gather at 43 Star Island for prayer. These gatherings occur approximately at dawn, in the later afternoon and in the early evening. Although there is no prearranged time for such gatherings, it is clear that attempts are made to hold, and prayers are in fact held on a regular basis at such times with whoever

happens to be at the premises, and wishes to take part in the group prayer. The group prayers consist of singing and chanting, and may last up to several hours per session. The Court has observed a videotape for a group prayer at 5:30 A.M. and has heard a tape of the chanting which accompanies such prayer, attended by approximately 15 to 20 people, which prayer has been described as typical (by witnesses for both plaintiffs and defendants) of the prayers held thrice daily. The main building is used for prayer gatherings.

27. The present permitted use of 43 Star Island, according to the Zoning Ordinance of the City of Miami Beach, Florida, is RS-1.

28. Section 6-1 of said Zoning Ordinance provides in pertinent part:

> **6-1 RS-1, RS-2, RS-3 and RS-4 Single-Family Residential Districts.**
>
> **A. DISTRICT PURPOSE.** These Districts are designed to foster and protect Miami Beach's single-family residential neighborhoods. The four Districts vary only in minimum lot area and lot width requirements.
>
> **B. USES PERMITTED.** No land, water or structure may be used, in whole or in part, except for one or more of the following uses:
>
> 1. Single-family detached dwelling.

2. The following uses may be permitted as a Conditional Use:

   a. Municipally owned and operated recreation facility, playground, playfield, park and beach.

   b. Municipal buildings and uses.

   c. Temporary use for a period not to exceed 15 days.

3. Accessory uses for above uses.

29. From the City of Miami Beach, Florida, Defendant TOWN has neither applied for, nor received, nor been granted nor used under a grant of approval for any conditional use of said premises as a church, in accordance with the Zoning Ordinance of the City of Miami Beach, Florida.

30. Churches are unconditionally permitted in the City of Miami Beach, Florida in several zoning districts.

31. The premises at 43 Star Island, Miami Beach, Florida are being used as a church and for church purposes within the contemplation of the Zoning Ordinance of the City of Miami Beach, Florida and in violation of this ordinance.

32. Such use will continue unless this Court enjoins the same.

33. On the facts of this case, there is no adequate alternative remedy that would satisfy the purposes of an injunction.

34. There is insufficient evidence that the premises at 43 Star Island, Miami Beach, Florida are being used as a multi-family dwelling.

In light of the above findings of fact and conclusions of law, it is hereby

ORDERED AND ADJUDGED as to Count I that the Motion for a Temporary Injunction is GRANTED and the Defendant JACQUELYN RENEE TOWN is immediately enjoined from maintaining a public nuisance at 43 Star Island, Miami Beach, Dade County, Florida, by allowing any person to enter or remain on said premises, and while entering or remaining there to keep, possess, smoke, use, and/or deliver cannabis in violation of Chapter 823.10, Florida Statutes (1978).

ORDERED AND ADJUDGED as to Count II that the Motion for a Temporary Injunction is GRANTED, and

a. The Defendant, JACQUELYN RENEE TOWN is hereby enjoined and restrained from permitting the premises at 43 Star Island from being used as a church or for church purposes, or a center for organized church activity and learning, including organized church prayers, organized church business and organized church study.

b. The Defendant, JACQUELYN RENEE

TOWN is enjoined from permitting group or communal prayer services, which include singing and chanting and which are held on a regular basis.

c. This Order shall in no way be construed to prohibit the Defendant JACQUELYN RENEE TOWN from praying in her own home, either alone or with members of her immediate family, or with several friends who may wish to do so.

d. This Order is not intended to prohibit the Defendant JACQUELYN RENEE TOWN from practicing her religion in her own home except as prohibited above.

e. The parties are directed to comply with the spirit and intent of this Order.

DONE AND ORDERED at Miami, Dade County, Florida this 17th day of January, 1979.

/s/ Frederick N. Barad
FREDERICK N. BARAD
CIRCUIT COURT JUDGE

SUPREME COURT OF FLORIDA

TUESDAY, JANUARY 8, 1980

CASE NO. 55,987

In the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida

78-20818

JACQUELYN RENEE TOWN,
Petitioner,

v.

STATE OF FLORIDA ex rel.
JANET RENO, etc., et al.,
Respondents.

Upon consideration of the Motion for Rehearing filed by attorneys for Petitioner, and response thereto,

IT IS ORDERED by the Court that said Motion be and the same is hereby denied.

TC

A True Copy

TEST:

Sid J. White

cc: Hon. Richard P. Brinker, Clerk
Hon. Frederick N. Barad, Judge

Milton M. Ferrell, Jr., Esquire
Beth Ellen Spiegel, Esquire

Clerk, Supreme Court

By: Tanya Carroll
Deputy Clerk

Alan B. Gest, Esquire
Arthur Joel Berger, Esquire
Bayard W. Heath, Esquire
Hon. R. J. Aldisent, Judge

IN THE SUPREME COURT OF FLORIDA
CASE NUMBER 55,987

JACQUELYN RENEE TOWN,
Petitioner/Appellant,

vs.

THE STATE OF FLORIDA, ex rel. JANET RENO, as State Attorney of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida; and THE CITY OF MIAMI BEACH, a Florida Municipal Corporation,
Respondents/Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that JACQUELYN RENEE TOWN, the Petitioner/Appellant above named, hereby appeals to the Supreme Court of the United States from the Final Judgment of the Supreme Court of the State of Florida, affirming the Order of the Circuit Court of the Eleventh Judicial Circuit, entered in this action on November 1, 1979, and becoming final upon the entry of an Order Denying the Petition for Rehearing entered on January 8, 1980 by the Supreme Court of the State of Florida.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

FERRELL & FERRELL
Attorneys for Petitioner/ Appellant
Suite #1639
Alfred I. DuPont Building
169 East Flagler Street
Miami, Florida 33131
Tel. (305) 371-8585

by: /s/ Milton M. Ferrell, Jr.
MILTON M. FERRELL, JR.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Appeal to the Supreme Court of the United States was mailed to JANET RENO, State Attorney in and for the Eleventh Judicial Circuit of Florida, 1351 N.W. 12th Street, Miami, Florida 33125 and to JOHN A. RITTER, City Attorney for the City of Miami Beach, to the attention of ALAN B. GEST, Assistant City Attorney, 1700 Convention Center Drive, Miami Beach, Florida 33139, this 21st day of March, 1980.

by: /s/ Milton M. Ferrell, Jr.
MILTON M. FERRELL, JR.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

Case No. 78-20818 (Barad)

STATE OF FLORIDA, ex rel. JANET RENO AS STATE ATTORNEY OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY, FLORIDA, and the CITY OF MIAMI BEACH, a Florida municipal corporation,
Plaintiffs/Appellees,

vs.

JACQUELYN RENEE TOWN,
Defendant/Appellant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that JACQUELYN RENEE TOWN, the Defendant/Appellant above named, hereby appeals to the Supreme Court of the United States from the Final Judgment of the Supreme Court of the State of Florida, affirming the Order of this Court, the Circuit Court for the Eleventh Judicial Circuit, entered in this action on November 1, 1979, and becoming final upon the entry of an Order Denying the Petition for Rehearing entered on January 8, 1980 by the Supreme Court of the State of Florida.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

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by: /s/ Milton M. Ferrell, Jr.
MILTON M. FERRELL, JR.

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by: /s/ Milton M. Ferrell, Jr.
MILTON M. FERRELL, JR.

Supreme Court, U. S.
FILED
JUL 21 1980
MICHAEL RODAK, JR., CLERK

No. 79-1530

in the

Supreme Court of the United States

October Term, 1979

JACQUELYN RENEE TOWN,

Appellant,

vs.

THE STATE OF FLORIDA ex rel. JANET RENO, etc., and the CITY OF MIAMI BEACH, FLORIDA,

Appellees.

On Appeal from the Supreme Court of Florida

MOTION to DISMISS

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CITY OF MIAMI BEACH

NO. 79-1530

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1979

JACQUELYN RENEE TOWN,

Appellant,

vs.

STATE OF FLORIDA ex rel. JANET RENO, As State Attorney of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida, and the CITY OF MIAMI BEACH, a Florida municipal corporation,

Appellees.

On Appeal from the Supreme Court of Florida

MOTION TO DISMISS

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Counsel for Appellee
CITY OF MIAMI BEACH

July, 1980

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1979

NO. 79-1530

JACQUELYN RENEE TOWN,

Appellant,

vs.

STATE OF FLORIDA ex rel. JANET RENO, as State Attorney of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida, and the CITY OF MIAMI BEACH, a Florida municipal corporation,

Appellees.

MOTION TO DISMISS

Appellee City of Miami Beach (hereinafter: "City Appellee") has been informed by the Office of the Clerk of this Court that on May 21, 1980 each Appellee was directed by letter to respond to Appellant's Jurisdictional Statement. The letter, if it was in fact directed to the City Appellee, was not received by the Miami Beach City Attorney's office.

As acknowledged in Footnote 1 of Appellant's Jurisdictional Statement, the jurisdiction of the Supreme Court has been evoked based on the statutory portion of the challenged injunction ("Question One"), which involves Appellant's use of marijuana as a religious sacrament. As the City Appellee lacks standing to discuss that issue, and as Appellant has not filed a Petition for Certiorari with respect to the nonstatutory issue ("Question Two," involving Appellant's use of her home as a church in violation of the City's zoning law), the City Appellee did not consider it appropriate under the Supreme Court's Rules to file a Motion to Dismiss or to Affirm.

In light of this Court's directive, however, the City Appellee submits this Motion opposing review of the latter portion of the trial court's injunction. The City is of course prepared to submit a Brief on the merits of "Question Two" should this Court decide to review both the statutory and nonstatutory portions of the Appeal.

As noted above, the interest of the City Appellee in this case is limited to that portion of the challenged injunction which prohibits Appellant from operating her residence on Star Island as an organized church. As stated in its Order, the Circuit Court made findings of fact and conclusions of law that:

> 1. The defendant was using her home in an exclusively residential district of Miami Beach as a church, in violation of the City's zoning ordinances;

2. Churches are unconditionally permitted in several other zoning districts within the City of Miami Beach.

As a result of these findings, which Appellant does not dispute or challenge, the court enjoined Appellant from using her Star Island residence;

> as a church or for church purposes or a center for organized church activity and learning, including organized church prayers, organized church business, and organized church study ... [or for] group or communal prayer services, which include singing and chanting and which are held on a regular basis.

However, the court also sought to protect Appellant's First Amendment Rights by warning that the injunction did not prohibit

> The Defendant ... from praying in her own home, either alone or with members of her immediate family, or with several friends who may wish to do so ... This Order is not intended to prohibit the Defendant ... from practicing her religion in her own home except as prohibited above.

Appellant has asserted that the Court's distinction between institutional and noninstitutional religious conduct is unconstitutionally vague, and will result

in government entanglement in religion.

The City cannot and does not deny that the injunction is potentially ambiguous in attempting to distinguish the operation of an organized church (which is banned) from the conduct of noninstitutional religious activities (which are protected). But the City Appellee believes that the Order nevertheless satisfies constitutional standards.

To a substantial degree, the lack of precision expressed by the injunction arises from the intractable nature of the subject matter itself, and is inevitable whenever churches or religions are regulated by a government. It is axiomatic that Local, State and Federal governments have the right to regulate churches in a reasonable fashion; indeed, Appellant does not contest the validity of the City's power to zone churches. Yet it is unrealistic to expect that the definitions and distinctions which necessarily result from such regulations can be infallibly precise. Even if the trial court's distinction between organized church activity and private but group prayer is not as precise as the parties might desire, such a preliminary attempt to enforce a city's proper restrictions on churches in residential areas does not create a substantial or novel federal question.

The challenged injunction clearly provides that Appellant is restrained only from operating an organized church within a small and exclusively residential island in Miami Beach. Appellant concededly has the

right to engage in worship and other personal religious activities in her home, and may also operate an organized church elsewhere within the City in accordance with applicable zoning regulations. Such a limited restraint on religious conduct is reasonable and obviously necessary for the welfare of the City and its inhabitants.

In addition, in the City Appellee's view it would be a potential waste of this Court's time and resources to review on vagueness grounds a temporary injunction which undoubtedly will be revised and improved by the trial court upon final judgment. In this respect the City Appellee disputes the statement made in Footnote 1 of Appellant's Jurisdictional Statement that Appellees have made no effort to seek a permanent injunction. On the contrary, because the City no less than Appellant genuinely desires clear guidelines as to the lawful and unlawful uses of Appellant's residence, the City is actively pursuing the case and seeks to clarify the very ambiguities which allegedly appear in the temporary injunction.

Therefore, unless this Court itself wishes to formulate the appropriate definition of a "church" in the absence of a full trial record, the City urges that the parties and the trial court be permitted the opportunity to more clearly delineate what conduct is prohibited, and what conduct is protected, with respect to the ordinance excluding churches from certain residential areas of Miami Beach.

Indeed, Appellant has conceded that the zoning issue is not properly ripe for Supreme Court review under 28 U.S.C. 1257 (2), in that no final judgment has been entered in the case. See Footnote 1 of Appellant's Jurisdictional Statement.

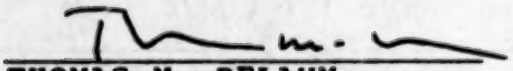
Finally, the City Appellee suggests that Appellant has failed to provide this Court with a jurisdictional basis for review. Although Footnote 1 of Appellant's Jurisdictional Statement invites the Court to exercise certiorari jurisdiction over the zoning portion of the case, Appellant has completely failed to support this proposition in accordance with the requirements of Supreme Court Rule 19.

As Appellant acknowledges, 28 U.S.C. 1257(2) does not authorize appellate review of the second issue on appeal, in that no challenge has been made to the ordinance underlying the injunction, and no final judgment has been entered in the case. Nor does certiorari jurisdiction properly lie under this Court's Rules or 28 U.S.C. 2103, in that Appellant has failed even to argue that the trial court's effort to enforce a city's zoning regulations presents a novel or unsettled issue, or one in which a major conflict of authority exists. See Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. City of Porterville, 90 Cal. App. 2d 656, 203 P. 2d 823 (1949), app. dismd. 338 U.S. 805 (1949), reh den. 338 U.S. 939 (1950) and City of San Marino v. Roman Catholic Archbishop of Los Angeles, 180 Cal. App. 2d 657, 4 Cal. Rptr. 547 (1960) cert den. 364 U.S. 909 (1960).

Accordingly, the City Appellee respectfully suggests that the zoning portion of this Appeal does not involve a substantial federal question, is not timely for review, and is not properly within the certiorari jurisdiction of the Court.

Respectfully submitted,

JOHN A. RITTER
City Attorney



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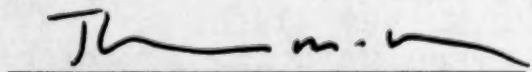
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing Motion to Dismiss was mailed to ARTHUR JOEL BERGER, Assistant State Attorney, Counsel for Appellee State, 1351 Northwest 12th St., Miami, Florida 33125 and to MILTON M. FERRELL, JR., 169 E. Flagler Street, Suite 1639, Miami, Florida 33131, Counsel for Appellant this 17 day of July, 1980.



THOMAS MARTIN PFLAUM
Assistant City Attorney

Supreme Court, U.S.
FILED
JUL 2 1980
MICHAEL RODAK, JR., CLERK

NO. 79-1530

in the

Supreme Court
of the
United States

October Term, 1979

JACQUELYN RENEE TOWN,
Appellant,

vs.

THE STATE OF FLORIDA ex rel.
JANET RENO, etc., and the
CITY OF MIAMI BEACH, FLORIDA,
Appellees.

On Appeal from the Supreme Court of Florida

MOTION TO DISMISS

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JANET RENO

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NO. 79-1530

in the

Supreme Court
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October Term, 1979

JACQUELYN RENEE TOWN,

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THE STATE OF FLORIDA ex rel.
JANET RENO, etc., et al.,

Appellees.

On Appeal from the Supreme Court of Florida

MOTION TO DISMISS

Appellee, JANET RENO, moves this Court to dismiss Question One (1) of Appellant Town's appeal[1] for lack of a substantial federal question for the following reasons.

Appellant Town asserts a violation of the Free Exercise Clause of the First Amendment as a result of the application of several state statutes to prohibit Ms. Town's dwelling house from being used as a place where the drug cannabis (marijuana) is illegally kept for and used by numerous adults and children.

Appellant Town concedes that this appeal does not involve errors of fact. (Jurisdictional Statement at page 18).[2] Consequently, this aspect of the litigation presents no constitutional problem.

Both the trial court and the Supreme Court of Florida utilized the proper constitutional analysis mandated by *Wisconsin v. Yoder,* 406 U.S. 205 (1972), when they assessed a Free Exercise Clause challenge to the application of facially neutral state statutes. This approach to resolution of the case is not constitutionally suspect.

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[1]Appellant Town presents two mutually exclusive issues involving distinct interests of two different sovereigns. Appellee Reno cannot properly represent the zoning law interests of the City of Miami Beach, Florida. Consequently, the City of Miami Beach, Florida is responding separately to Question Two (2) raised by Appellant Town.

[2]Absent the most exceptional circumstances, this Court will accept factual determinations in which the trial and appellate courts have concurred. *Branti v. Finkel,* ____ U.S. ____, 100 S.Ct. 1287, 1291 n. 6 (1980); *California Retail Liquor Dealers Ass'n. v. Midcal Aluminum, Inc.,* ____ U.S. ____, 100 S.Ct. 937 (1980). This rule applies even where a question of fact may have constitutional significance. *Time, Inc. v. Firestone,* 424 U.S. 448 (1976).

Both the distribution for use and use of cannabis were found to be religious practices of Ms. Town's particular religious sect and were found to be practices motivated by Ms. Town's sincere religious belief. Thus, there is *not* presented on this appeal an infringement of the Free Exercise Clause's prohibition against civil court litigation in ascertaining a sect's religious practice, in proving the truth or falsity of a religious belief or in determining the presence or absence of fraud. *See Jones v. Wolf,* ____ U.S. ____, 99 S.Ct. 3020 (1979); *Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976); *Fowler v. Rhode Island,* 345 U.S. 67 (1953); *United States v. Ballard,* 322 U.S. 78 (1944). Moreover, these are favorable findings about which Appellant Town can have no complaint.

As required, the Florida courts determined whether a compelling state interest existed. As a matter of law, the interests of public health and public safety regarding drug use are a well-settled, permissible and vital part of a government's police power. *Whalen v. Roe,* 429 U.S. 589 (1977); *Robinson v. California,* 370 U.S. 660 (1962); *Barsky v. Board of Regents,* 347 U.S. 442 (1954); *State of Minnesota ex rel. Whipple v. Martinson,* 256 U.S. 41 (1921). "The public interest in preventing drug traffic is great, ..." *United States v. Mendenhall,* ____ U.S. ____, 48 U.S.L.W. 4575 at 4580 (1980) (Powell, J., concurring). In every case specifically and directly presenting a head-on clash between the public interests in health and safety on the one hand and the Free Exercise Clause on the other, this Court has ruled in favor of these particular governmental interests. *Jehovah's Witnesses v. King County Hospital,* 390 U.S. 598 (1968), *per curiam affirming without opinion,* 278 F.Supp. 488 (W.D.

Wash. 1967) (blood transfusion); *Prince v. Massachusetts,* 321 U.S. 158 (1944) (children working on streets); *Jacobson v. Massachusetts,* 197 U.S. 11 (1905) (vaccination against small-pox epidemic). When engaged in general discussions of the Free Exercise Clause, this Court has given preeminence to public interests in health and safety. *McDaniel v. Paty,* 435 U.S. 618 at 634 (1978) (Brennan, J., concurring) (prohibiting dangerous snake-handling or human sacrifice); *Wisconsin v. Yoder,* 406 U.S. 205 at 230 (1972) (protecting physical or mental health of child); *Poulos v. New Hampshire,* 345 U.S. 395 at 409 (1953) (requiring permits to run businesses, erect structures, purchase firearms, transport or store explosives or inflammatory products, hold public meetings without prior safety arrangements); *Cleveland v. United States,* 329 U.S. 14 (1946) (prohibiting Mann Act violation); *Chatwin v. United States,* 326 U.S. 455 (1945) (prohibiting kidnapping); *Cox v. New Hampshire,* 312 U.S. 569 at 574 (1941) (prohibiting person from ignoring familiar red traffic light even if he thought it his religious duty to disobey the municipal command); *Cantwell v. Connecticut,* 310 U.S. 296 at 308 (1940) (prohibiting exhortation of others to physically attack members of another religious sect; and preventing clear and present danger of riot, disorder, interference with traffic upon public streets or other immediate threat to public safety, peace or order); *Reynolds v. United States,* 98 U.S. 145 at 166-167 (1878) (preventing human sacrifice, preventing wife from burning herself on funeral pyre of dead husband, preventing parent from starving child to death). Thus, no error of constitutional law was committed as a result of a legal conclusion that public health and safety regarding the use of cannabis is a compelling state interest.

As a matter of law, the compelling state interests being asserted must be *the* interests directly implicated by the conduct involved in the very case at issue. *See Wisconsin v. Yoder,* 406 U.S. 205 (1972); *Sherbert v. Verner,* 374 U.S. 398 (1963). Here, indiscriminate use of cannabis by numerous adult and child guests, as well as driving on the public highways, was evident. Thus, the interests being asserted were specifically triggered by the facts of this case. And, consequently, no constitutional error presents itself at this point in the analysis of the lower courts.

The Florida courts were required to engage in and did engage in a balancing process between the conduct at issue and the specific state interests involved. In this regard, the trial court expressly found *absent* actions by Appellant Town that serve to counter-balance or neutralize the State's compelling interests. Ms. Town did not assert that consumption of cannabis would be stopped or that her guests would be barred from driving to or from her dwelling house. Moreover, it is obvious that Ms. Town is powerless to control the effect of cannabis use either on those she allows to partake of her sacrament or on those otherwise uninvolved members of the general public who could be affected by the conduct of those whom she allows to partake. *Compare Wisconsin v. Yoder, supra.* As a result of balancing, the conclusion in this case was, simply put, that the protective privilege ends where the public peril begins. From a constitutional perspective, this ultimate conclusion has no flaw.

Where First Amendment freedoms are involved, the Government may not choose means that unnecessarily

restrict constitutionally protected liberty, even when it can lawfully impose restrictions. Thus, States are constitutionally required to adopt the least drastic means to achieve their ends. The State must employ means closely drawn to avoid unnecessary abridgment. The limitation must be no greater than is necessary or essential to protect the particular governmental interest involved. The sweep of the restriction must not be unnecessarily broad. *Illinois State Bd. of Elections v. Socialist Workers Party,* 440 U.S. 173 (1979); *Elrod v. Burns,* 427 U.S. 347 (1976); *Procunier v. Martinez,* 416 U.S. 396 (1974). This law applies to injunction orders and requires that the order in question must be tailored as precisely as possible to the exact needs of the case. *Carroll v. President and Comm'rs of Princess Anne,* 393 U.S. 175 (1968). In this case, none of these principles were violated. The objective of this litigation was prevention of a specific threat to public health and safety, not punishment. Therefore, the use of an injunction was a constitutionally proper alternative. The injunction, itself, cuts with a surgeon's scalpel, not a butcher's knife. Only the use of cannabis at the dwelling house is proscribed. No other religious practice is curtailed.[3] No religious beliefs, as opposed to religious actions, are suppressed. No other constitutionally protected freedom is curtailed. The forbidden activity is concrete, discrete and clearly identifiable. Unlike what could occur in other ephemeral areas of the First Amendment, a violation of this order can be easily and scientifically determined. Thus, enforcement of this order facially poses no greater threat than is permissible and essential to protect the particular governmental

[3]Obviously, Appellee Reno is confining this remark to her portion of the order and not that portion involving the zoning laws of the City of Miami Beach, Florida.

interests involved. *Compare Vance v. Universal Amusement Co.*, ____ U.S. ____, 100 S.Ct. 1156 (1980). On its face, the injunction order entered in this case does not transgress the above constitutional mandate.

Appellant Town insists that this Free Exercise Clause litigation requires the State to do more than demonstrate relevant compelling state interests, and specifically prove the occurrence of misconduct implicating those interests. Rather, as Ms. Town views the Constitution, State reliance on a generalized presumption of cause and effect, based as it might be on specific scientific studies or lay observation, is not enough. Ms. Town's position is that the State must specifically prove that her conduct, or the conduct of her guests, resulted in the feared harms. To be more precise, she points to an absence of evidence that her physical or mental health, or that of her guests, has deteriorated as a result of using cannabis and further points to the absence of evidence that anyone had been harmed by a vehicle driven by her, or one of her guests. But, this Court has expressly rejected a First Amendment requirement of nothing less than proof of actual injury to the involved individual, where the State's laws at issue are prophylactic measures whose objective is the prevention of harm before it occurs. Proof of *her misconduct, or the misconduct of her guests,* under circumstances *likely* to result in the adverse consequences that the State seeks to avert, suffices. *Ohralik v. Ohio State Bar Assoc.*, 436 U.S. 447 (1978); *In re Primus,* 436 U.S. 412 (1978); *Procunier v. Martinez,* 416 U.S. 396 at 414 (1974). In this case, Florida did not commit constitutional error by failing to await a post-mortem examination or to first compel Ms. Town and

her guests to undergo vivisections. Indeed, the imposition of such a requirement could lead to results such as court ordered medical examinations which, themselves, could become a tool to persecute religious sects and suppress religious freedom.

Finally, Appellant Town contends that the trial court's order in this case did not employ the least restrictive alternatives available to satisfy the state interests involved. The general legal principles governing this aspect of First Amendment litigation have been stated above and need not be repeated.

First, Ms. Town asserts that the injunction should not have extended beyond a prohibition of the use of cannabis by children at Appellant Town's dwelling house. This claim must fail. While giving drugs to school children may be more offensive, the State's compelling interests have wider reach and include the safety and health of adults, as well as children. Because of this fact, the limitation on both of these classes is no greater than is necessary and essential to protect the particular governmental interests involved. Consequently, the Constitution does not require the State to view this suggestion as a rational and satisfactory alternative. Nor is there a constitutional basis for a dichotomy between consenting adults and children in this area. *See Paris Adult Theatre I v. Slaton,* 413 U.S. 49 at 68-69 (1973). Moreover, Appellant Town overlooks two crucial factual findings in the trial court. "Cannabis is freely given for use to . . . children who are not members of the faith as a part of proselytizing." And, "It is part of the [religious] practice that the children of adult members of the faith are permitted to smoke cannabis

as part of their upbringing in the faith." (Appendix to Jurisdictional Statement at 14a). Given those findings, this proposed alternative is not a less drastic means to achieve governmental ends in the constitutional sense at issue here.

Second, Ms. Town asserts that a less restrictive alternative satisfying the State's compelling interest in safety is enforcement of existing laws prohibiting use of an automobile while under the influence of cannabis. This proposed alternative is not preventative and, therefore, does not satisfy the State's main objective. Rather, this suggestion would take effect when the individuals in question were already driving on the roads, thereby bringing the potential injury at issue even closer to realization. Moreover, this alternative is not less restrictive, but merely changes the location at which the same restriction applies and the same degree of interference with religious practice occurs.

The third and last "less restrictive" alternative fares no better than the other two. Ms. Town suggests that the injunction be limited to a prohibition of the use of cannabis at her dwelling house by anyone not a church member. But, the State's compelling interests in public health and public safety cover all persons, members and non-members alike. Because of this fact, the limitation on both of these classes is no greater than is necessary and essential to protect the particular governmental interests involved. Consequently, the Constitution does not require the State to view this suggestion as a rational and satisfactory alternative. Moreover, Appellant Town ignores a crucial finding of the trial court that "Cannabis is freely given for use to adults and children who are not members of the faith as

part of proselytizing." (Appendix to Jurisdictional Statement at 14a). Given that finding, this proposed alternative is not a less drastic means to achieve governmental ends in the constitutional sense at issue here. Worse still, that proposed alternative, if contained in the trial court order, would run afoul of the Establishment Clause by casting the State and the courts in the role of arbiters of what is necessary to constitute a member of this religious sect and who the members are. *Committee For Public Education v. Regan,* ___ U.S. ___, 100 S.Ct. 840 (1980); *N.L.R.B. v. Catholic Bishop of Chicago,* 440 U.S. 490 (1979); *New York v. Cathedral Academy,* 434 U.S. 125 (1977). Surely the Constitution cannot compel a violation of the Constitution as a means of satisfying the Constitution.[4] Ironically, a comparable provision of that portion of the trial court's order directed to the zoning violations is the same basis upon which Appellant Town, herself, asserts a violation of the Establishment Clause (Jurisdictional Statement at 21).

There is no error of fact. The Florida courts neither expanded, contracted nor contravened any

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[4]Ms. Town does not consent to a modification of the court order to realize this alternative proposed by her. Compulsion by court order is still required. But, even if she consents, that fact would not avoid the inherent Establishment Clause problem. *Committee For Public Education v. Nyquist,* 413 U.S. 756 (1973); *Engel v. Vitale,* 370 U.S. 421 (1962).

Arguably, no violation of the Establishment Clause would occur if this Church, itself, was the final determiner of who its members were. *Jones v. Wolf,* ___ U.S. ___, 99 S.Ct. 3020 (1979). But, that would place control of the order in the hands of this Church. Since the fox should not guard the chicken coop, a counter-argument along this line is unacceptable.

constitutional principle of law established by this Court. There is no constitutional error resulting from the application of established law to the established facts. Consequently, when viewed from every relevant perspective, *this* case *does not* involve a *substantial* federal question. Jurisdiction is thus lacking. This Court's general statement in *McDaniel v. Paty,* 435 U.S. 618, 628 n. 8 (1978), that it has not yet passed on the conclusions of other comparable cases does not, itself, create a substantial federal question in *this* case.

WHEREFORE, Appellee, JANET RENO, respectfully requests this Court to dismiss Question One (1) of Appellant Town's appeal for lack of a substantial federal question.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) true and correct copies of the above Motion to Dismiss have been mailed to *both* Milton M. Ferrell, Jr., Counsel for Appellant Town, 169 East Flagler Street, Suite 1639, Miami, Florida 33131 *and* John A. Ritter, Counsel for Appellee the City of Miami Beach, Florida, 1700 Convention Center Drive, Miami Beach, Florida 33139, on this the 20th day of June, 1980.

/s/
ARTHUR JOEL BERGER
Assistant State Attorney